Supreme Court, U.S.
Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

87-934

IN THE

Supreme Court of the

United States

October Term, 1987

JOSEPH L. DESHIELDS, JR.
Petitioner,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Respondent.

On Writ of Certiorari to the
U.S. Court of Appeals for the Federal Circuit

Joseph L. DeShields, Jr.
520 Lincoln Ave.
Aiken, S.C. 29801
(803) 649-9923

Pro Se

QUESTION PRESENTED

WHETHER PETITIONER'S FIRST AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED BY THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT WHEN IT AFFIRMED THE INITIAL DECISION OF THE MERIT SYSTEMS PROTECTION BOARD AND DENIED THE PETITIONER A HEARING ON THE ISSUE OF ENFORCED LEAVE?

CERTIFICATE OF INTERESTED PARTIES

The undersigned certify that the following persons have an interest in the outcome of this case.

JOSEPH L. DESHIELDS, JR.	Petitioner
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	Respondent
FREDERICK W. FORD, ESQ.	Agency Representative
SOLICITOR GENERAL CHARLES FRIED	Dept. of Justice

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

JOSEPH L. DESHIELDS, JR.

Petitioner,

v

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Respondent.

ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

TO THE HONORABLE UNITED STATES SUPREME COURT:

Petitioner, in case number 87-3197 before the U.S. Court of Appeals for the Federal Circuit, respectfully submits this brief in support of petitioner's request for review on writ of certorari of the opinion below.

OPINION BELOW

The opinion of the U.S. Court of Appeals for the Federal Circuit, in case number 87-3197 is set out in the court transcript and is reproduced in Appendix A.

JURISDICTION

The Supreme Court of the United States has jurisdiction pursuant to 28 USCA Section 2101 (5).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves U.S. Constitution Amended 1 and 14; and 5 U.S.C., Section 7701 (a) 1982; 5 U.S.C.A. Section 1101 et seq. 7501 (2), 7511 (a) (2), 7512 (2), 7513 (a,d), 7701 (a).

STATEMENT OF THE CASE

I. NATURE OF THE PROCEEDINGS

This case (No. 87-3197) is on Writ of Certiorari to the U.S. Court of Appeals for the Federal Circuit. The U.S. Court of Appeals for the Federal Circuit affirmed the decision of the Merit Systems Protection Board, Atlanta Regional Office, Atlanta, Georgia, by denying jurisdiction of the petitioner's initial appeal and request for a hearing on the issue of enforced leave.

II. SUMMARY OF THE FACTS

Petitioner, Joseph L. DeShields, Jr., a GS-9 Equal Opportunity Specialist (EOS) in the agency's Atlanta District Office, was forced on administrative leave and forced to take a medical examination.

On June 6, 1986, petitioner received a letter from Thomas Edwards, Atlanta District Office Personnel Director, advising him of a medical examination with Dr. Michael Landy. On the date in question the petitioner was on sick leave in South Carolina. Also, on June 6, 1986, petitioner received a letter from Constance L.

Dupree, Director Region I Programs/Office of Program Operations, forcing him to take a medical examination or receive an adverse action.

On June 11, 1986, upon his return from sick leave, petitioner was forced on administrative leave by Harris A. Williams, Atlanta District Office Director. On June 24, 1986, petitioner took a requested medical examination from Dr. Michael Landy. Dr. Landy is a doctor of Internal Medicine and not a psychiatrist.

On July 3, 1986, petitioner received a letter from the Director of the Atlanta District Office, Harris A. Williams, advising him of a report from Dr. Landy and placing him on enforced leave, with an effective date of July 7, 1986. On July 11, 1986, the petitioner was advised by letter that he was scheduled to take a psychiatric examination. On July 11, 1986, petitioner wrote a letter to the Personnel Director of The Atlanta District Office, Thomas Edwards, advising him that he would not comply with a Psychiatric Examination request.

On July 22, 1986, petitioner received a letter from Harris A. Williams, District Director, advising him of a scheduled (forced) psychiatric examination from a Dr. Walter H. Shehee.

On August 7, 1986, petitioner received an Initial Decision from the Merit Systems Protection Board, Atlanta Regional Office. On August 22, 1986, petitioner received a certified letter from his immediate supervisor, Ms. Carolyn Daniels, Intake Unit Supervisor. This letter was a proposal to remove petitioner from the agency. On October 30, 1986, petitioner received a letter from Harris A. Williams, District Director, advising him of his decision to remove the petitioner from the payroll.

On November 17, 1986, petitioner received a letter from Frederick W. Ford, Agency Representative, trying to force him out of the service on a medical disability. On January 12, 1987, petitioner received a final decision on his initial appeal from the Central Office of the Board, Washington, D.C.

SUMMARY OF THE ARGUMENT

The U.S. Court of Appeals for the Federal Circuit denied petitioner his First and Fourteenth Amendment rights by affirming the initial decision of the Merit Systems Protection Board, Atlanta Regional Office, Atlanta, Georgia.

In Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d. 556, the Supreme Court stated that the constitutional right to be heard is a basic aspect of the duty of the government to follow a fair process of decision making when it acts to deprive a person of his possessions.

In Marbury v. Madison, 5 U.S. 137, the Supreme Court has held that where a law is in opposition to the Constitution, and both the law and the Constitution apply to a particular case, the court must determine which of the conflicting rules governs the case. Also, the court has held that where both the Constitution and the law in opposition to the Constitution apply to a particular case the courts must determine that the Constitution and not the law governs the case.

In affirming the initial decision of the Merit System Protection Board the court cited Martel v. Department of Transportation, FAA, 735 F. 2d 504, 507 Fed. Cir. 1984. However, the federal courts have held that an agency's decision to place an employee on enforced leave, which lasts more than 14 days, constituted an appealable "suspension" over which the Merit Systems Protection Board has jurisdiction. 5 U.S.C.A., Section 1101 et seq. 7501 (2), 7511 (a)(2), 7512, 7513 (a,d), 7701 (a).

The court's decision in Martel is arbitrary in that it departs from the accepted and usual course of judicial proceedings and in doing so, denied petitioner due process of law. In Mercer v. Department of Health and Human Services, 772 F. 2d 856 (Fed. Cir. 1985), the court held that enforced leave pending the results of a fitness-for-duty examination because the agency believes appellant presented a threat to his fellow workers is disciplinary, and the Merit System Protection Board has jurisdiction. Additionally, the court held that enforced leave

in Mercer is an εppealable suspension to the Merit Systems Protection Board, regardless of whether the appellant is ready, willing and able to work.

ARGUMENT AND AUTHORITIES

THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT VIOLATED PETITIONER'S FIRST AND FOURTEENTH AMENDMENT RIGHTS BY AFFIRMING THE INITIAL DECISION OF THE MERIT SYSTEMS PROTECTION BOARD AND BY DENYING PETITIONER A HEARING ON THE ISSUE OF ENFORCED LEAVE.

A. The U.S. Court of Appeals for the Federal Circuit rendered a decision that is Arbitrary in that it denies the petitioner due process of law under the 1st and 14th amendments of the U.S. Constitution.

Under the Civil Service Reform Act of 1978 (the Act), "a federal employee has the right to submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law rule or regulation". 5 U.S.C., Section 7701 (a) (1982).

By denying the petitioner the right to a hearing before the Merit Systems Protection Board, the U.S. Court of Appeals for the Federal Circuit has departed from the accepted and usual course of judicial proceedings.

In Marbury v. Madison, 5 U.S. 137, the Supreme Court stated that it is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule

to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

The court in Marbury continued by stating that if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.

The court concluded by stating that those, then, who controvert the principle that the Constitution is to be considered, in court, as

a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law.

In Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d. 556, the Supreme Court stated that for more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard".

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. In this case the possessions are ten years of federal employment as a GS-9, and a salary range of about $26,000 per year. The petitioner was sent home from his employment in Atlanta, Georgia, he appealed the adverse action to the United States Merit Systems Protection Board, and the Board refused to hear his case and/or grievance.

The Supreme Court continued in Fuentes by stating that the right to a hearing is to serve its full purpose, then, it is clear that it must

be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred.

The court concluded in Fuentes by stating that the essential reason for the requirement of a prior hearing is to prevent unfair and mistaken deprivations of property, however, it is axiomatic that the hearing must provide a real test. "Due process is afforded only by the kind of 'notice' and 'hearing' that are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property".

In Dimick v. Schiedt, 55 S. Ct. 296, the opinion stated that the Supreme Court is

specially charged with the duty of construing and upholding the Constitution and must be alert to see that a doubtful precedent is not extended by mere analogy to a different case if the result of such extension will be to weaken or subvert what the court conceives to be a principle of the fundamental law of the land.

In Wood v. Georgia, 101 S. Ct. 1097, the court stated that where a possible due process violation is apparent on particular facts of a case the Supreme Court is empowered to consider the due process issue.

In Strauder v. State of W. Va., 100 U.S. 303, the court stated that the fourteenth amendment (U.S.C.A. Const.), although prohibitory in terms, confers a positive immunity or right to the colored race, the right to exemption from unfriendly legislation against them distinctly as colored.

B. The U.S. Court of Appeals for the Federal Circuit rendered a decision

that is Arbitrary in that it overlooks other Federal court decisions and Merit Systems Protection Board decisions on the issue of enforced leave.

The U.S. Court of Appeals for the Federal Circuit in affirming the initial decision of the Merit Systems Protection Board cites the case of Martel v. Department of Transportation, Federal Aviation Administration, 735 F. 2d 504, 507 Fed. Cir. 1984. This decision is in conflict with the decisions of the Merit Systems Protection Board and other federal court of appeals on the same matter. Also, the court has decided a federal question in a way that has departed from the accepted and usual course of judicial proceedings.

The legal issue in addition to the constitutional issue is: Was the agency's action in placing the petitioner on enforced leave an appealable adverse action to the Merit Systems Protection Board? The petitioner responds in the afirmative and in support of this affirmation directs the court's attention to: (1) Passmore v. Department of Transportation, Docket Number

SL 07528510177; (2) Mosely v. Department of the Navy, 4 MSPB 220; (3) Thomas v. General Services Administration, 756 F. 2d 86 (Fed. Cir. 1985); (4) Woodall v. Federal Energy Regulatory Commision, 28 M.S.P.R. 192 (1985); (5) Johnson v. Orr, 747 F. 2d 1352 (1984); and (6) Mercer v. Department of the Health and Human Services, 772 F. 2d 856 (Fed. Circ. 1985).

In Mosely v. Department of the Navy, 4 MSPB 220, the Merit Systems Protection Board established three criteria which must be met before an enforced leave is considered a "suspension". First, the employee must have been placed on enforced leave without his consent. Second, the employee must have been ready, willing and able to work during his period of leave. Third, the enforced leave must have been used in a personal disciplinary situation.

In Passmore v. Department of Transportation, Docket Number SL 07528510177, the presiding official held that the enforced leave was an improper suspension within the Board's jurisdiction.

In Thomas v. General Services Administration, 756 F. 2d 86 (Fed. Cir. 1985), and Woodall v. Federal Energy Regulatory Commission, 28 M.S.P.R. 192 (1985), it is held that it is not necessary to determine whether appellant is ready, willing, and able to perform the duties of his position in order to decide the jurisdictional issue in an appeal involving enforced leave status.

In Mercer v. Department of Health and Human Services, 772 F. 2d 856 (Fed. Cir. 1985), the appellant Mercer was placed on enforced leave pending a fitness-for-duty examination after verbally threatening his supervisor. The court found that enforced leave ordered because the agency believes that the employee's retention on active duty could be injurious to the employee, his fellow workers, or the public is "disciplinary" in the broader sense of maintaining the orderly working of the Government against possible disruption by the suspended employee. The court concluded that the Board had jurisdiction over the agency's placing of

appellant on enforced leave. Therefore, the court established that where the enforced leave is ordered pending inquiry or where retention on duty status would be injurious to the employee, his or her fellow workers, or the public, the enforced leave constitutes an appealable suspension regardless of whether the appellant is ready, willing and able to work.

PRAYER

For all the foregoing reasons, Petitioner Joseph L. DeShields, Jr. respectfully prays that the Supreme Court of the United States grant a review on writ of certorari.

Respectfully submitted,

BEST AVAILABLE COPY

CERTIFICATE OF SERVICE

I hereby certify that copies of the Brief for the Petitioner were served on this day to the following persons:

By Certified Mail to:

Senior Circuit Judge Cowen
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Frederick W. Ford, Esq.
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20507

Charles Fried
Solicitor General
Department of Justice
Washington, D.C. 20530

November 5, 1987 Joseph L. DeShields, Jr.
Date Joseph L. DeShields, Jr.
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that copies of the Brief for the Petitioner were served on this day to the following persons:

By Certified Mail to:

Senior Circuit Judge Cowen
U.S. Court of Appeals for the Federal Circuit
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Washington, D.C. 20439

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Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20507

Charles Fried
Solicitor General
Department of Justice
Washington, D.C. 20530

November 13, 1987
Date

Joseph L. DeShields, Jr.
Pro Se

APPENDIX

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APPENDIX D: ORDER FROM HOWARD T. MARKEY, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT AND DATED JUNE 13, 1987

APPENDIX E: LETTER FROM THE CLERK, U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT AND DATED AUGUST 10, 1987

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 Madison Place, N.W.
Washington, D.C. 20439

OCT 02 1987

NOTICE TO COUNSEL

The Court today announced its decision in the attached appeal or appeals.

A copy of the Court's opinion or opinions is enclosed, and judgment thereon has been entered today as required by Rule 36, Federal Rules of Appellate Procedure.

Costs may be recovered (by Petitioner or Respondent) as provided by Rule 39, Federal Rules of Appellate Procedure.

If sanctions have been imposed, please make check payable to the U.S. Treasury and foward same to the opposing attorney of record.

Very truly yours,

Francix X. Gindhart, Clerk

By_____
Deputy Clerk

NOTE: This opinion has not been prepared for publication in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent. The deicsion will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

87-3197

JOSEPH L. DESHIELDS, JR.,

Petitioner,

v

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

DECIDED: October 2, 1987

Before FRIEDMAN and DAVIS, Circuit Judges, and COWEN, Senior Circuit Judge.

PER CURIAM.

DECISION

The decision of the Merit Systems Protection Board (MSPB), MSPB No. AT07528610631, which dismissed petitioner's appeal for lack of jurisdiction is affirmed.

OPINION

Mr. DeShield's was formerly employed as an Equal Opportunity Specialist in the Atlanta District Office of the Equal Opportunity Commission. He was placed on administrative leave for the purpose of an evaluation by a medical doctor to determine the state of his physical and mental health. He appealed to the MSPB contending: (1) that the administrative leave and medical examination were improperly forced upon him by the agency; (2) that he was mentally and physically competent to perform his job; (3) that the agency had a practice of harassing competent employees and replacing them with incompetent employees; (4) that he had been harassed by his supervisors and managers; and (5) that the agency had discriminated against him because of his handicap.

Mr. DeShields did not suffer any loss of pay or other benefits while on administrative leave. The MSPB properly concluded that it had no jurisdiction over his appeal, because the action did not constitute a suspension within

the Board's appellate jurisdiction. Under the provisions of 5 U.S.C. § 7501(2), a suspension is not appealable to the MSPB, unless it is established that the employee had been placed in a temporary status without duties and without pay (emphasis added). See Martel v. Dept. of Transportation, FAA, 735 F.2d 504, 507 Fed. Cir. 1984).

Although Mr. DeShields was placed on administrative leave involuntarily, the action was not an appealable suspension within the language of the statute and the holding of this court in the Martel case. Therefore, the MSPB properly dismissed his appeal for lack of jurisdiction.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
ATLANTA REGIONAL OFFICE

JOSEPH L. DESHIELDS, JR., Appellant,	DOCKET NUMBER AT07528610631
v.	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Agency.	DATE: AUG071986

BEFORE

S. F. Vesser
Administrative Judge

INITIAL DECISION

ANALYSIS AND FINDINGS - JURISDICTION

By a petition filed June 25, 1986, the appellant submitted an appeal to the Atlanta Regional Office of the Merit Systems Protection Board. The appeal is from an agency action placing the appellant on administrative leave effective June 11, 1986.

The Board has authority to hear and decide all matters within the Board's appellate

jurisdiction, as conferred by law, rule, or regulation. 5 U.S.C. §§ 1205(a)(1) and 7701(a). Because there is a question of the Board's jurisdiction in this case, both parties were afforded the opportunity to address the matter of jurisdiction before the record closed on that issue. The appellant bears the burden of proof as to the issue of jursidiction. 5 C.F.R. § 1201.56.[1] For the reasons set out below, the appeal is DISMISSED.

The undisputed evidence shows that the appellant was placed on administrative leave effective June 11, 1986, pending resolution of the appellant's medical condition. The agency's decision to place the appellant on administrative leave was based on performance related issues and the appellant's apparent perception of harassment. The agency placed the appellant on sick leave effective July 7, 1986, pending the results of a psychiatriac examination; however, on July 22, 1986, the

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[1] The Board's regulations have been republished at 51 Fed. Reg. 25,146-72 (July 10, 1986). All citations in this decision to 5 C.F.R. Part 1201 are to that publication.

agency rescinded the July 7 directive, as it pertained to sick leave, and amended its records to show the appellant in an administrative leave status since July 7, 1986. Enforced leave, under certain circumstances, is considered a suspension. Thus, the issue to be resolved is whether the appellant's administrative leave status, which has continued since June 11, 1986, constitutes an improper suspension within the Board's appellate jurisdiction.

Enforced (involuntary) sick and annual leave, as well as enforced leave without pay, have been found to be improper suspensions which are appealable to the Board. See Passmore v. Department of Tranportation, MSPB Dkt. No. SL07528510177 (June 13, 1986) and cases cited therein. A suspension is the placing of an employee, for disciplinary reasons, in a temporary status without duties or pay (emphasis added). 5 U.S.C. § 7501(2); Mercer v. Department of Health and Human Services, 772 F.2d 856 (Fed. Cir. 1985). In Pulley v. Department of Health and Human Services, 14 M.S.P.R. 131 (1982), the Board found that a period of administrative leave was not an enforced leave status which constituted an improper suspension.

Although the evidence shows that the appellant has been placed in an administrative leave status, without his consent, he has suffered no los of pay or benefits. Because there has been no loss of pay or benefits, the appellant is not deemed to have been suspended. Thus, the appeal is not within the Board's appellate jurisdiction.

Because the agency action is not appealable to the Board, the Board also lacks jurisdiction to entertain the issue of handicap discrimination which the appellant raised. Smith v. Department of Health, Education, and Welfare, 2 M.S.P.R. 479 (1980). In light of my finding with respect to jurisdiction, the hearing requested by the appellant was not sceduled. Rose v. Department

of Health and Human Services, 721 F.2d 355 (Fed. Cir. 1983).

DECISION

The appeal is DISMISSED on the basis that it is not within the Board's appellate jurisdiction.

REVIEW RIGHTS

This initial decision of the Merit Systems Protection Board will become a final decision of the Board on SEP 11, 1986 unless a petition for review is filed by that date or the Board reopens the case on its own motion. 5 C.F.R. §§ 1201.113-.117. Any party or the Office of Personnel Management may seek to have it reviewed with:

Office of the Clerk
Merit Systems Protection Board
1120 Vermont Ave. N.W.
Washington, D. C. 20419

in accordance with 5 C.F.R. § 1201.114 of the Board's regulations. The parties should note that they are required to serve any petition for review and any subsequent pleading on all other parties. The petition for review must be filed on or before SEP 11 1986 and must set forth objections to the initial decision, supported by references to applicable laws, regulations, and the record.

Any appellant adversely affected or aggrieved by a final decision of the Board may file a petition with the United States Court of Appeals for the Federal Circuit, if the court

has jurisdiction. 5 U.S.C. § 7703. A petition may not be filed while the case is pending before the Board. To be timely, the petition for judicial review must be received by the Court within 30 days after the Board's decision becomes final. Petitions must be sent to:

U.S. Court of Appeals for
the Federal Circuit
717 Madison Place, N.W.
Washington, D. C. 20439

FOR THE BOARD:

S. F. VESSER
Administrative Judge

CERTIFICATE OF SERVICE

JOSEPH L.. DESHIELDS, JR. v. EQUAL EMPLOYMENT OPPORUNITY COMMISSION - AT07528610631

I hereby certify that copies of the foregoing initial decision were served this date by regular mail to the individual identified below:

Joseph L. DeShields
703 Durant Place, N.E., Apt. 2
Atlanta, GA 30308

Frederick W. Ford
Equal Employment Opportunity Commission
Associate Legal Counsel, Room 214
2401 E. Street, N.W.
Washington, D. C. 20507

AUG 07 1986
Date

Gloria B. Pixton
Legal Clerk

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

JOSEPH L. DESHIELDS, Appellant,	)	DOCKET NUMBER AT07528610631
v.	)	
EQUAL EMPLOYMENT JAN121987 OPPORTUNITY COMMISSION, Agency.	)	DATE:

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

ORDER

After full consideration, the Board DENIES appellant's petition for review of the initial decision issued on August 7, 1986, because it does not meet the criteria for review set forth at 51 Fed. Reg. 25,158 (1986) (to be codified

at 5 C.F.R. § 1201.115)* This is the Board's final order in this appeal. The initial decision is now final. 5 C.F.R. § 1201.113(b)

NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal, if the court has jurisdiction. 5 U.S.C. § 7703. The address of the court is 717 Madison Place, N.W., Washington, D. C. 20439. The court must receive the petition no later than 30 days after you or your representative receives this order.

FOR THE BOARD:

Robert E. Taylor
Clerk of the Board

Washington, D. C.

* On July 10, 1986, the Board republished its entire rules of practice and procedure in the Federal Register. For ease of reference, citations will be to the Board's regulations at 5 C.F.R. Part 1201. However, parties should refer to 51 Fed. Reg. 25,146-72 (1986) for the text of all references to this part.

The Board's regulations provide that the appellant bears the burden of proof as to any issue of jurisdiction. 5 C.F.R. §1202/56(a)(2).

CERTIFICATE OF SERVICE

I certify that this ORDER was sent today:

By certified mail to:

Joseph L. DeShields
703 Durant Place, N.E., Apt. 2
Atlanta, GA 30308

By regular mail to:

Frederick W. Ford
Equal Employment Opportunity Commission
Associate Legal Counsel
2401 E Street, N.W.
Washington, D. C. 20507

Merit Systems Protection Board
Atlanta Regional Office
1365 Peachtree Street, N.E.
Suite 500
Atlanta, GA 30309

Office of Personnel Management
Attn: Appellate Policies Branch
1900 E Street, N.W., Room 7635
Washington, DC 20415

By hand to:

Office of the Special Counsel
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, DC 20419

1/12/87
(Date)

Robert E. Taylor
Clerk of the Board

Washington, D. C.

Note: This Order wil not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent.

United States Court of Appeals for the Federal Circuit

JOSEPH LEE DESHIELDS, JR.	)	
	)	
Petitioner,	)	
	)	
v.	)	Appeal No. 87-3197
	)	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
	)	
Respondent.	)	

Before MARKEY, Circuit Judge.

ORDER

Upon consideration of the unopposed motion of Joseph Lee DeShields, Jr., to file a nonconforming brief,

IT IS ORDERED THAT:

The motion is granted; the brief is accepted for filing.

FOR THE COURT

13 June 87
Date

Howard T. Markey
Chief judge

cc: Joseph Lee DeShields, Jr.
Sharon Y. Eubanks, Esq.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 Madison Place, N.W.
Washington, D. C. 20439

August 10, 1987

Mr. Joseph L. DeShields
520 Lincoln Avenue
Aiken, SC 29801

Ms. Sharon Y. Eubanks
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

Re: DESHIELDS V EEOC, 87-3197

Dear Sir and Madam:

A review of this case indicates that oral argument is not required and that the appeal may be decided on the briefs without prejudice to full consideration of the issues.

Counsel for both parties, or the petitioner or appellant pro se if not represented by counsel, may file a memorandum presenting reasons why oral argument would assist the court or answers to points in an opposing brief that might otherwise have been presented at oral argument, or both. The memorandum may be typewritten on 8 1/2 by 11-inch paper. An original and six copies of the memorandum should be filed on or before August 24, 1987.

If oral argument is reinstated, the appeal may be scheduled for hearing during the September 1-4 session of the court, and you will be notified of the exact day and time.

Very truly yours,

Francis X. Gindhart
Clerk